CF0000062454

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(02)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.(M.P.)

Cr.Appeal No. 1593 /1999

APPELLANT (In Jail) : Gajjoo son of Sonau, aged about 40 years, resident of village Pachori, P.S.Saragaon, Distt. Janjgir, M.P.

Versus

RESPONDENT: : The State of M.P.

CRIMINAL APPEAL UNDER SECTION 374, CRIMINAL PROCEDURE CODE.

(29)

A.F.R.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.1593/99 **सन्** ~~200~~

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH

HON'BLE MR. L.C. BHADOO, AG. C.J. &

HON'BLE MR. SUNIL KUMAR SINHA, J.

12-1-2007

Smt. Usha Chandrakar, counsel for the appellant.

Shri Ashish Shukla, Additional Public Prosecutor for the State/respondent.

Oral judgment dictated on *Dais*.

L.C. BHADOO, Ag. CJ.

This appeal is directed against the judgment of conviction and order of sentence dated 4th May 1999 passed by the Additional Sessions Judge, Janjgir in S.T. No.201/98 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life & to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for two months.

The case of the prosecution, in brief, is that on 22-1-98 in between 3-4 p.m. when Budhwara Bai along with her daughter Ram Kali were standing at tailoring shop of Shyamlal (PW-1), at that time, all of a sudden, accused Gajju Sarathi came on the scene, he caught hold of Budhwara Bai by her hairs, dragged her and stabbed her on the stomach with a knife, as a result of which she fell down on the ground. In the meantime, Ram Kali daughter of Budhwara Bai snatched knife from the hands of the accused. The accused ran away. Devnarayan (PW-4) also appeared on the scene, he tried to catch the accused but the accused ran away. As a result of stab injury, blood

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started oozing out of the injury and Budhwara Bai died instantaneously. The matter was reported by Shyamlal (PW-1) in the Police Station Saragaon under merg intimation Ex.-P/4, based on that F.I.R. (Ex.-P/1) was registered. The I.O. left for scene of occurrence, he prepared site plan Ex.-P/2, he seized 4 blouse under Ex.-P/3, after giving notice Ex.-P/5 to the Panchas, inquest report Ex.-P/6 was prepared on the body of Budhwara Bai. Blood stained soil and plain soil was seized under Ex.-P/7. Knife, weapon of offence, and Lungi were seized from the place of occurrence under Ex.-P/8. Clothes of the accused were seized under Ex.-P/10. The body of Budhwara Bai was sent for postmortem examination to the Primary Health Centre, Champa under Ex.-P/13 where Dr. V.K. Agrawal (PW-10) conducted postmortem on the body of the deceased and opined that cause of death was shock due to excessive haemorrhage as a result of injury to the vital organ (left lung). Ram Kali (PW-2) was also examined by the doctor and two abrasions were found on her body. Dr. V.K. Agrawal prepared the injury report Ex.-P/15. The injuries on the body of Gajju was also examined on 23-1-98, two incised wounds and 3 abrasions were found on his body.

After usual investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, 1st Class, Janjgir, who in turn, committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge, Janjgir received the case on transfer for trial.

Prosecution in order to establish the charge against the accused examined 11 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against

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him in the prosecution evidence, stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing counsel for respective parties and perusal of the record, convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

At the outset, learned counsel for the accused/appellant has not disputed homicidal death of Budhwara Bai. Apart from that, from the ocular evidence of PW-1 Shyamlal, at whose shop the accused assaulted the deceased with knife, P.W-2 Ram Kali, daughter of the deceased, who was present on the scene of occurrence, PW-3 Samarin Bai, who was also present on the spot & PW-4 Devnarayan, who reached immediately on the spot, as also medical evidence of Dr. V.K. Agrawal (PW-10), who has stated that he conducted postmortem on the body of Budhwara Bai, on account of stab wound Budhwara Bai died. The death was homicidal in nature, the injury was sufficient in the ordinary course of nature to cause death, his report is Ex.-P/17, from the above ocular and medical evidence, it is established that death of the deceased was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, PW-1 Shyamlal, at whose shop Budhwara Bai and her daughter Ram Kali were standing, has stated that the accused came and attacked the deceased with knife on the stomach, as a result of which blood started oozing out of the injury, the deceased fell down and died instantaneously. The above evidence of Shyamlal has been corroborated in material particulars by the evidence of P.W-2 Ram Kali, daughter of the deceased,

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who was present on the scene of occurrence, as also the evidence of PW-3 Samarin Bai and PW-4 Devnarayan. In cross-examination of these four witnesses, defence has not been able to elicit any circumstance which makes the evidence of these witnesses untrustworthy or unreliable. Shyamlal, Samarin Bai and Devnarayan are independent witnesses, therefore, there is no reason before this Court to disbelieve the evidence of these witnesses. To this extent, we are of the considered opinion that finding of the trial Court is based on legal evidence and no illegality or infirmity has been committed by the trial Court to arrive at a decision that the accused was author of the crime in question.

Learned counsel for the accused/appellant placing reliance on the judgment of the Apex Court in the matter of **Bagdi Ram V. State of Madhya Pradesh** reported in **2003 AIR SCW 6692** argued that in this case the accused assaulted the deceased only once that too from the back side. There was no intention of the accused to cause death of the deceased, as such offence against the accused does not travel beyond Section 304 Part-II of the I.P.C..

On the other hand, learned counsel for the State/respondent while supporting the judgment of the trial Court argued that single injury cannot be taken a ground that the accused had no intention to cause death. Other surrounding circumstances i.e. weapon of offence, place where injury was inflicted, force used and the manner in which crime was committed are to be considered for ascertaining intention of the accused.

In order to appreciate arguments advanced by learned counsel for the respective parties, we have perused evidence available on record. PW-1

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Shyamlal has stated in his evidence that Budhwara Bai and her daughter were standing at his shop, he was taking measurement for stitching blouse of Budhwara Bai, at that time, all of a sudden, the accused appeared on the scene of occurrence, firstly, he caught Budhwara Bai by her hairs, dragged her and stabbed with a knife, as a result of which lot of blood came out. Budhwara Bai fell down. Similar is the evidence of P.W-2 Ram Kali and PW-3 Samarin Bai.

In this connection, evidence of Dr. V.K. Agrawal (PW-10), who conducted postmortem, is also relevant, who has stated that there was cut wound in the size of 4.5 cm in length & 0.1 cm in width in horizontal shape, injury was 15 cm below the scapula & it was 5 cm left from dorsal spine, blood was oozing out of the injury, injury was 9 cm deep in the chest, internal muscles were cut and left lung was damaged. He has further stated that cause of death was due to injury on the vital organ, excessive haemorrhage and shock. Injury was sufficient in the ordinary course of nature to cause death.

Single injury cannot always be a sole ground for reaching to the conclusion whether the accused assaulted the victim with intention to cause his death or not. In order to ascertain intention of the accused, the Court is required to evaluate prosecution evidence before arriving at a conclusion, look into the manner in which offence was committed i.e. surrounding circumstances coupled with nature of weapon, part of the body where injury was inflicted, force with which injury was inflicted and the background facts leading to the assault are some of the factors to be considered, as has been

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held by the Apex Court in the matter of **Thangaiya V. State of Tamil Nadu** reported in **2005 Cri. L.J. 684**.

In the matter of **Darshan Yadav and others V. State of U.P.** reported in **(2005) 10 Supreme Court Cases 592** the Apex Court held that "*Single injury – Question as to nature of offence – Submission that only one injury was said to have been inflicted and the same could not give rise to offence under S.302 – Accused inflicted injury by ballam, a sharp-cutting weapon – Doctor found serious injuries in the abdomen of the deceased – He opined that the injury suffered by the victim was sufficient to cause death in the ordinary course of nature – On such facts, held, case under S.302 clearly made out.*"

In the matter of **Jaiprakash V. State (Delhi Administration)** reported in **(1991) 2 SCC 32** the Apex Court held that "this case is of single injury inflicted by the appellant. In para-19, the Apex Court held that 'in this case, the accused intentionally inflicted the injury though it may not be premeditated one. All the circumstances would clearly indicate such a state of mind that he aimed and inflicted that injury with a deadly weapon. In the absence of evidence or reasonable explanation to show that the appellant did not intend to stab in the chest with knife with that degree of force sufficient to penetrate the heart, it would be perverse to conclude that he did not intend to inflict that injury that he did. When once the ingredient 'intention' is established, the offence would be murder as the 'intended' injury is found to be sufficient in the ordinary course of nature to cause death. Therefore, an offence of murder is made out."

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Therefore, while reaching to the conclusion as to whether single blow was assaulted with intention to cause death or it was caused without premeditation, in a sudden fight, in a heat of passion and without having intention to cause death has to be decided based on the facts of each case.

In the light of above principle, if we look into the evidence of the present case, which has been mentioned above, the background of the case is that on the complaint of Budhwara Bai the accused was convicted in a criminal case, he was sent to jail and after his release, on the fateful day, he came prepared with knife, without any kind of quarrel or altercation between the deceased and the accused, when the deceased was giving measurement for stitching of her blouse to Shyamlal, all of a sudden, the accused caught hold of her by her hairs, dragged her and stabbed with knife, that single blow was caused with such force that it penetrated about 9 cm inside the body, damaged the lung, vessels were also damaged & cut, therefore, these facts are suggestive that the accused assaulted the deceased with intention to cause death.

In **Bagdi Ram**'s case (Supra), there was sudden quarrel, in that quarrel, the accused, in a heat of passion, picked up axe and assaulted once. Therefore, facts of the said case cited by learned counsel for the accused/appellant are distinguishable.

In the result, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court. The appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed.

Sd/-
Sunil Kumar Sinha
Judge

Sd/-
Acting Chief Justice

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